THE INHERITANCE OF PROPERTY.

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THE chief modern industrial problem is often stated to be the distribution of property. What is wanted is widely-diffused property, and it is desired to bring about this wide diffusion without injustice, and without injury to the springs of economic activity.

Many proposals are brought forward which aim to produce a more general prosperity. Two of the best-known are the single tax and socialism. These, however, apart from all other considerations, encounter the strongest obstacles to their introduction because they are so averse to powerful private interests. Wise social reform will always seek for the line of least resistance. It is granted that the end proposed by socialism and the single tax is desirable in so far as it contemplates a wide distribution of wealth; but before committing ourselves to any extreme doctrines it is well to ask, What can be done without radical change?—in other words, what can we accomplish in order to ameliorate the condition of the masses without departure from the fundamental principles of the existing social order? When we reflect upon it, we find that there are many things, and that these are quite sufficient to occupy the thoughts and energies of well-wishers of their kind for a long time to come. At the present time I feel inclined to classify the chief things required to bring about an improved condition of society in the United States under three heads, namely:

First—Education in its broadest sense, including kindergartens, manual training, technical schools, colleges, and universities.

Second—The abolition of private monopoly, and the substitution therefor of public ownership and management of all those en-

terprises which are by nature monopolies, like railways, gas and electric-lighting businesses, telegraphs, telephones, etc.

Third—A reform of the laws of inheritance.

What can be done by a regulation of inheritance to change the distribution of property, and consequently of the opportunities and income which property yields? Once in a generation nearly all property changes owners, and that gives opportunity for bringing about the greatest changes within half a century. There is a perpetual flow of property from the dead to the living, and it is possible by means of law to exercise much influence over this current. When we attempt to bring about reform and improvement by a wise regulation of inheritance, we have a solid basis of experience to help us. One part of such legislation which naturally suggests itself is the taxation of the estates of decedents, and such estates are taxed to a greater or less extent in nearly all—perhaps in all—great modern nations. We may mention England, Australia, New Zealand, and Switzerland as countries with particularly instructive experience in the taxation of inheritances. Pennsylvania, New York, and Maryland in the United States have experience which is valuable as far as it goes. Three of the countries named, Australia, New Zealand, and Switzerland, have taxation of inheritances which amounts to a conscious attempt to influence the distribution of property.

Some one may interrupt at this point with the objection, "You are proposing measures which impair the rights of private property." The objection is not valid. The right of inheritance is one right, and the right of private property is another and a distinct right. He has made but little progress in the fundamental principles of jurisprudence who does not see how clearly separated are these two rights. The right of property means an exclusive right of control over a thing, but the right of inheritance means the transfer of this right in one manner or another. If there is no will, it means the right of some one to succeed to property, and this right is a product of positive law. If a will is made, the right of inheritance means, not an exclusive right of control vested in a person, but the right of a person to say who shall exercise the right of property over things which were his while he was living, after he is dead, and, consequently, after he has lost all rights of property, because the dead have no proprietary rights whatever. Blackstone in his "Commentaries on

the Laws of England" clearly discriminates between the rights of property and the rights which we lump together under the designation inheritance. He says :

"Naturally speaking, the instant a man ceases to be, he ceases to have any dominion : else if he had a right to dispose of his acquisitions one moment beyond his life, he would also have a right to direct their disposal for a million of ages after him, which would be highly absurd and inconvenient. All property must, therefore, cease upon death, considering men as absolute individuals unconnected with civil society. . . . Wills, therefore, and testaments, rights of inheritance and succession, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them ; every distinct country having distinct ceremonies and requisites to make a testament completely valid ; neither does anything vary more than the right of inheritance under different national establishments."

Blackstone says it is an erroneous principle to suppose that "the son has by nature a right to succeed to his father's lands," or that the owner "is by nature entitled to direct the succession of his property after his own decease."

The right of private property in itself is not an unlimited one, but is limited and regulated to an increasing extent by all modern nations. Let one but think what this right implies. It implies, among other things, my right to fence in a certain portion of the earth's surface, and to exclude others from it and use it as I see fit, subject only to such general regulations as may exist to prevent the abuse of private property. These regulations, however, as they are general in character, must always leave untouched many gross abuses. But when we come to the claim that my right of disposing of property by last will and testament is practically unlimited, it means not only my right to regulate the use of certain portions of the earth's surface, or claims to certain portions of other valuable things in this earth, during my lifetime, but for all future time. There are those, indeed, who go so far as to hold that a man may establish certain regulations for the use of property after he is dead and gone, and that these regulations must be binding upon all future generations. Could any claim be more monstrous ? It is in itself the extremest radicalism. We may say, in fact, that it is the furthest reach which radicalism has yet attained.

Nothing illustrates better the changing ideas and practices concerning inheritance than this right to make a last will and testament. Sir Henry Maine, in his "Village Communities," says : "The power of free testamentary distribution implies the greatest latitude ever given in the history of the world to the voli-

tion or caprice of the individual." The right of making a will is one which has not been generally recognized, it is safe to say, during the greater part of the world's history. Probably the vast majority—say, as a rash guess, nineteen-twentieths—of the human beings who have ever lived have not known this right. There is a legal maxim of the old Teutonic law which prevailed among our ancestors to the effect that "God, not man, makes heirs." This old Teutonic law provided that a man's property should pass to his family, and this he could not prevent if he would. This has been the most common regulation of inheritance. The Roman law brought in the right of free testamentary disposition of property; a development of individualism in keeping with many other parts of this law. The Roman law, however, had no sooner established the right of a man to dispose of his property by will and testament than it began to limit this right, and to make these limitations more and more far-reaching. The experience of other countries has been similar. No sooner do we come near an unlimited right of disposing of property by last will and testament than we begin to beat a retreat.

The modern man thinks it a right thing in itself that he should be able to tell what shall become of his property after his death, but millions of human beings have lived and died who have thought it a thing right in itself that the laws of inheritance should exclude the right to make a will. This merely illustrates the changing, fluctuating ideas concerning inheritance. In the States of the American Union for some time after our Revolutionary War, the right of the eldest son to receive a double portion of his father's estate obtained, and it was spoken of as "being according to the law of nature and the dignity of birthright." As a matter of fact, the laws of inheritance direct the disposition of most property, and they gradually so form our opinions that we look upon what they provide as naturally right, although they provide one thing in one country or state, and another thing in another country or state. It has been said that even when wills are made in modern times they as a rule do little more than carry out the provisions of the law. Perhaps there is no department of life in which law has a greater effect upon public opinion.

If it is the function of the law to regulate inheritance, what should be the purpose of the law? We may say that the law has three purposes. The first is to gratify the desire of the individ-

ual to direct the disposition of his property after his death. This, however, is altogether minor and subordinate. The dead have no legal rights, and we should not allow their wishes to interfere with the living. The second purpose of the law is the chief one, and that is the preservation and security of the family. The third purpose is the welfare of society in general; and under this head we may say that the preservation of small properties is important, and that the idea of justice which demands that a person should make a fair return for that which he receives is one which ought to be kept in view.

Let us consider briefly the family. The Rev. Samuel W. Dike, who has made the study of the family as a social institution a specialty, complains that our laws neglect to treat the family as such, and to provide for its welfare. This is true. The modern legislator does not stop to ask the effect of proposed measures upon the family as an institution. Frequent divorces, of which we hear so much, are only one manifestation of this general neglect, the fruit of radical individualism. We have done one thing in the United States thoroughly,—we have made careful provision for the rights of the wife in the property of her husband. The law generally provides that the wife shall inherit a third, or the use of a third, of the husband's estate, and no will can lessen the wife's legal share. This is a far-reaching limitation of the right of making a will. But even when providing for the wife, the legislator seems to have regarded her rather as an individual than as a part of the family. Some States, like New York, make no adequate provision for the husband of a wife with property, allowing her to disinherit the husband, and, under certain circumstances, if she dies and leaves no will, the property will go to cousins rather than to the husband.

There has been nowhere in the United States adequate provision for children, although it might be supposed that their claims would be superior even to the claims of a wife. A wife enters into relation with her husband when she is an adult, freely and voluntarily; but children have no choice about the relationship into which their parents bring them. The laws of some countries provide that a child must receive a certain share of the estate of a parent, and that this cannot be willed away. This share is called in the Roman law "*legitima portio*,"—legitimate part,—but the German law has a better designation for it,

"*Pflichttheil*"—duty part. The laws of France provide that a father with children may will away only what would be a child's share of his estate, and that the rest must be divided equally among all the children. The details of the law may vary, but it is contrary to the fundamental principles of the law to neglect to provide for children in the laws of inheritance. Those who are responsible for having brought children into the world may not presume to disinherit them. A parent's duty is to do all in his power to give his children the training and opportunities which will enable them to lead happy and useful lives. It is not desirable that children should be placed in such a position that self-exertion is rendered needless. I should say that in the United States the "duty part" of a child of even the richest parent need not exceed fifty thousand dollars, and that so far as the rest of the estate is concerned, after providing for wife and children, and after satisfying the claims of the State, that should be left subject to free disposition.

When no will is made, the rule according to which property is divided among wife and children in this country is, perhaps, tolerably satisfactory; but suppose a man dies making no will, and has only collateral relatives: what should be their legal claim upon the estate? The modern laws which provide that even distant relatives may inherit the property of intestates are survivals of an earlier period, when large family groups lived together and formed a kind of a family partnership under the authority of the patriarch. When a man died under such circumstances, it was only natural that his property should pass to the family or the clan, itself but a larger family, for all were united together by the ties of interest and affection. There was a correspondence between rights and duties. But what is the case at the present time? The peculiar ties which bind together distant relatives are practically unworthy of consideration. Rights and duties ought to be coördinate, but distant relatives recognize no special duties towards one another, and do not think about their common relationship unless there is some property to be inherited from a distant rich relative, for whom they care nothing. In the absence of a will, there is positively no reason whatever why any one should inherit from a third cousin. The family reason does not cover the case, because family feeling does not in our day extend so far, and, indeed, there is no reason why it should.

The right of inheritance, so far as relatives are concerned, should reach as far as the real family feeling does, but no farther. Intestate inheritance should include, perhaps, those who are nearly enough related so that they can trace descent from a common great-grandfather, but none who are more distantly related. This allows second cousins to inherit from one another, but not third. It allows that one may inherit from a great-uncle, but not from a great-great-uncle, and so forth. Any provision for a more distant relative should be made by will, just the same as provision for any one who is not related at all. All property which is not willed away, and does not fall to some heir recognized by law, should fall to the state as the ultimate heir.

The right of disposing of property by will and testament may be left intact—and should be so left in the public interest—with the limitations already mentioned and to be mentioned presently. After all legally-recognized claims are satisfied, it is beneficial rather than otherwise to allow a person to dispose of the rest of his estate by will, although it should be clearly recognized that this is a matter over which the law has control, and that no human being has a right to say what shall take place on this earth, or what use shall be made of anything he may leave, after he is dead and gone. It may very well happen that there are persons with moral claims upon a man who are not connected by ties of blood, or not nearly enough related to inherit property according to the laws of intestate inheritance. The only way to make provision for such special cases which justice or gratitude may point out is by will. It may also happen that among the legal heirs there may be a particular reason why one should be selected as the recipient of more than a proportionate share of the property. Take the case of four or five brothers, one of whom is a cripple, the others being strong, active, and capable: what could be more just than that the unfortunate one should receive a larger share than the others? It may also happen that of three or four daughters one has married a poor man and the others wealthy men, and the father may see good reason for equalizing their conditions. A thousand-and-one cases arise in daily life for which individual provision must be made, as they do not fall under the general rule and the law cannot provide for them. Persons of means may also properly enough leave property to educational and charitable institutions. The right to

dispose of a portion of property by will tends to the encouragement of energy and thrift.

All inheritances of every sort should be taxed, provided the share of an heir exceeds a certain amount. The state or the local political unit—as town or city—must be recognized as a co-heir entitled to a share in all inheritances. A man is made what he is by family, by town, or the local political circle which surrounds him, and by the state in which he lives, and all have claims which ought to be recognized. Taxation of inheritance is the means whereby this claim of the state and town may secure recognition. It should, however, be borne in mind that it is a peculiar tax, and rests upon a different basis from the ordinary tax. The justification which appeals to me most strongly is that the political organisms are co-heirs. There are, however, many different stand-points from which the taxation of inheritances can be justified. Property which comes by inheritance is an income received without toil. It is for the one receiving it an unearned increment of property, and on this account may properly be taxed. The most satisfactory basis upon which property can rest is personal toil and exertion of some kind, and when property comes otherwise than as a return for social service, a special tax finds a good solid basis in justice.

It generally happens, perhaps universally, that a large property does not pay its fair share of taxes during the lifetime of its owner, and the tax upon estates when their owners die may be regarded—if it is not too large—as a payment of back taxes. It is notorious with us that personal property bears relatively a very small proportion of the burdens of government, and it has been proposed that the ordinary property tax on personal property should be abolished, and that in the place thereof there should be substituted a tax on all estates of decedents in so far as they consist of personal property. These, however, are grounds only for a limited tax, which in the case of personal property ought to be added to the regular inheritance tax, if personal property is otherwise exempted from taxation.

The taxation of inheritances should be graduated, the tax increasing as the relationship becomes more distant, and as the property becomes larger. This is in the line of the present development of taxation of inheritances. The tax rises to 20 per cent. of the estate in some of the Swiss cantons, to 13 per cent.

in New Zealand, and to 10 or 11 per cent. in some other countries. I would have the tax vary from 1 to 20 per cent., establishing 20 per cent. as the maximum; at any rate, until public opinion is more enlightened. Mr. Andrew Carnegie is willing to see a tax-rate of even 50 per cent., and advocates such a high tax on estates of decedents on social grounds. It will probably be a long time before so high a tax would meet with general approval, but we know that a tax of 20 per cent. works well. In the case of near relatives, small amounts inherited by each ought to be entirely exempt from taxation. There is provision in the laws of many countries that small legacies left to servants should be free from taxation, and this, like other provisions recognizing the family, is praiseworthy.

The celebrated Professor Bluntschli, of Heidelberg, laid down these proposals for reform in the laws of inheritance:

First, the share of a child is not to be taxed unless it exceeds $24,000, but of any excess above $24,000 the local political unit (which, for the sake of brevity, we will hereafter call town in every case) shall receive 10 per cent. If the share of a child exceeds $120,000, the state shall receive of the excess above $120,000 a child's share.

Second, if the estate falls to parents or grandparents of the decedent, the town is to receive a share of 5 per cent. of the estate, provided the share of a single ancestor is more than $2,400 but does not exceed $12,000, and 10 per cent. of the excess of a share over $12,000. If the share of a single ancestor exceeds $24,000, the state receives a share equal to 10 per cent. of the surplus.

Third, the brothers and sisters, and children of brothers and sisters, of decedents are to be treated, so far as inheritance goes, like parents and grandparents.

Fourth, if the heirs of the decedent are descended from grandparents, but not from the same parents,—that is to say, if they are cousins, aunts, and uncles,—the town is to be entitled to a share of 10 per cent. of the estate if this exceeds $2,400, and 20 per cent. of the excess of the estate above $12,000. If the estate exceeds $24,000, 20 per cent. of this excess is to go to the state, and not to the town.

Fifth, if the heirs of the decedent are descended from common great-grandparents, but not from common grandparents or

parents, the share of the town is to be 20 per cent. if the estate exceeds $2,400, and 30 per cent. of the excess above $12,000; and if the estate exceeds $24,000, the state is to receive 30 per cent. of this excess.

Sixth, if the decedent has no relatives near enough to be descended from common great-grandparents, the estate is to fall to the town if it does not exceed in value $12,000, but if the value is greater than this, the entire surplus above $12,000 is to fall to the state.

Seventh, if the decedent leaves a husband or wife, the survivor is to have a life interest in the share of the town or state.

Bluntschli proposes that this property acquired by the local political units and the state should be used as a fund to support institutions especially designed to promote the interests of the property-less classes; also that it should be used to reward persons who have distinguished themselves in science or in art, or who have rendered especially valuable service to the poorer classes of society. He is unwilling to allow a diversion by will of that portion of an estate which falls to the town or state, but he is willing to allow a person to direct that that portion which belongs to the town or state as "duty part" (*Pflichttheil*) should be made over to charitable, benevolent, or educational foundations, provided town and state give their approval, and he is also willing that the testator should give survivors a life interest in that part of the estate which must ultimately fall to town or state.

These proposals of Bluntschli seem eminently wise and conservative, and, while it may be desirable to alter them in details, they furnish an excellent basis for discussion.

The use to be made of the funds acquired by the taxation of inheritances, and by establishing the co-heirship of town and state, must vary according to time and place. Bluntschli would have this property used to provide large estates for persons who have rendered signal service to the state. There is precedent enough for this in European states. Bismarck received a fortune after the Franco-Prussian War, and England has conferred fortunes upon great generals. While such a disposition of property to create great and powerful families may, perhaps, be proper enough in Germany, it would be altogether unsuitable for our country. There are, however, many uses which suggest themselves. In cases of cities, towns, and States weighed down with

debt, the payment of bonds would be an excellent employment of the funds. In case taxes are extraordinarily high and are weighing down industry, the tax-rate might be reduced. I think, however, that there are very few places in the United States where a properly-developed tax system would not provide for all present expenditures of government without overburdening any one. But there are great improvements which it is desirable to carry out, and these funds could be used to effect improvements which cost too much to be defrayed out of the ordinary taxation.

The States of the Union, and many of the towns, ought to go into forestry, purchasing large tracts of land, especially on mountains and along river courses, and covering these with trees. States and cities have allowed the ownership of valuable public works to slip away from them into the hands of private corporations. Water-works, gas works, street-car lines, and the like might be purchased and operated at cost. All great cities require a larger number of parks, especially of small parks in the crowded sections. Sanitary measures may be mentioned, and some of these are expensive. They, however, lower the death-rate and improve the health of the community. There are many cities which ought to buy slums and tear down the houses in them. The city of Manchester, England, bought quite a large tract of land in the centre of the city, which was the worst slum region in it, and tore down all the houses. It then leased the land for a limited term of years, to be built up with houses according to plans and specifications laid down. The result has been a remarkable improvement in Manchester, and it is said that, when these leases fall in, Manchester will be one of the richest, if not the richest, municipal corporation in the world. London has recently decided to undertake a similar improvement, but it is stated that in the case of London this will involve great expense.

School funds ought to be increased until they become great enough, with the aid of current taxation, to provide the entire population with the best educational facilities of every sort, including manual training, kindergartens, public libraries, universities, industrial museums, art-galleries, and the like. It would be especially desirable to improve the schools in the rural communities, establishing good high-schools wherever the population is sufficient to furnish them with pupils. Good schools in the country districts would tend to keep people in the country,

for now many leave the country and go to the cities purposely to educate their children. It is on every account desirable to make the country pleasanter and more attractive as a place of abode. Another fund may be suggested as suitable to be accumulated out of property inherited by the State and town, and that would be a highway fund, designed to help to improve the streets and roads of the State. The income of this fund could be distributed to towns and counties in such a manner as to encourage them in the improvement of roads and streets. It might be provided, for example, that for every two or three dollars expended by the local political unit one should be granted from the fund.

I believe the line of reform proposed in this article will stand every test which can be applied to it. It is, as already mentioned, a reform which meets with approval wherever tried, and with increasing approval the longer it is tried. It is a reform especially in keeping with democratic institutions, and it has succeeded best in democratic countries. So perfectly is it in keeping with true democracy that the purer, the more complete, and the more cultured the democratic countries have become in which this reform has been tried, the more they are inclined to move further along the same line. It is entirely compatible with the fundamental principles of the existing social order, and does not interfere with its normal and peaceful evolution. It antagonizes no other line of progress, but helps forward every other true reform. It provides ample public funds when accompanied by a rational system of taxation, and yet lays a burden heavy to be borne on no one.

We may examine this reform of the laws of inheritance with respect to the family, and we find that it tends to the development of the family as an institution far better than the existing laws in the United States. It recognizes the solidarity of the family. The husband is responsible to the wife and the wife to the husband, and both are responsible for the children they have brought into the world. It coördinates rights and duties. It may be stated, however, in this connection that duty should be extended among the various members of a family; in particular the reciprocal duties of parents and children should be sharpened and strengthened. The duty of support—and adequate support in proportion to means—should apply both to parents and to children, parents supporting the children in their youth, and children

the parents in their old age. The various members of the family organism should be drawn together by an extension of duties. It may be questioned whether any one should have the right to inherit from a person provided he may not under any circumstances be called upon to minister to his support. As Emerson and the other great thinkers have long been saying, it is time now to stop talking so much about rights, and to begin to emphasize duties.

If we look at this reform from the stand-point of society, we find that it stands every test to which it can be subjected. It diffuses property widely, and results in a great number of families with an ample competence, and tends to prevent the growth of plutocracy. It is these families with a competence lifting them above a severe struggle for bare physical necessities, which carry forward the world's civilization. It is from these families that the great leaders of men come, and not from either of the two extremes of society, the very rich or the very poor, both of which extremes we wish to abolish. Excessive wealth discourages exertion, but a suitable reform of the laws of inheritance will remove from us many idle persons who consume annually immense quantities of wealth, but contribute nothing to the support of the race; and who, leading idle lives, cultivate bad ideals and disseminate social poison. For the sake of the sons of the rich, as well as for the sake of the sons of the poor, we need a reform of the laws of inheritance.

A reform of the laws of inheritance of property will help us to approach that ideal condition in which the man who does not work shall not eat, and it will also tend to an equalization of opportunities so as to give all a fairer start in life, allowing each one to make such use of his opportunities as his capacity and diligence permit, and thus rendering inequalities, economic and social, less odious and injurious, more stimulating and helpful. This reform tends to make income a reward for service, thus realizing in a higher degree than at present the demands of justice. It must tend indirectly to discourage idleness and to encourage industry, and to repress that gambling, speculative spirit which desires something for nothing, and wants to get a living without rendering an honest return of some kind.

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